Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

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CASE AND COMMENT

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William R. Day.

The masterful way in which representative American lawyers have shown their capacity for the largest national and international affairs when called from their professional life into the public service has one of its most striking illustrations in the career of William R. Day. It is one of the many demonstrations that no public position is too high for a lawyer of symmetrical, keen, and trained intellect, sound judgment, and high character.

Judge Day has been a prominent figure in eastern Ohio for many years, and has been known throughout the state as a lawyer of pronounced ability. He was born in 1849 at Ravenna, in Portage county, on what is known as the Western Reserve, settled by people from Connecticut and other New England states and New York. But when he went from Ravenna to Canton in Stark county, to settle for the practice of the law, although he went but one county south, he changed from a Yankee community into one that had been settled in large part by immigration from Pennsylvania German localities. He was graduated from the collegiate department of the University of Michigan, and also from its law department in 1872. Shortly after this he was admitted to the bar and became the law partner of William A. Lynch, in Canton. The firm rapidly took a commanding position in the law practice of the state. He was elected to the common pleas bench in 1886, but after a brief service he resigned, presumably because the salary of $2,500 per year was insufficient to justify the surrender of his professional income. President Harrison appointed him judge of the United States court of the northern district of Ohio in 1889, but a threatened failure of health compelled him to resign before he qualified. He has now been appointed circuit judge of the sixth circuit.

Judge Day is of slender build, but has demonstrated his ability to endure the strain of long-continued mental exertion which might be disastrous to many who appear to be of greater physical strength.

Judge Day's wife, Mary Schaefer Day, whose father was a practising lawyer in Canton, is a highly accomplished woman. They have four sons, the oldest of whom is now a student at Ann Arbor. His brother, David B. Day, with Austin Lynch, a younger brother of his first law partner, made up the firm of Day, Lynch, & Day at the time of Judge Day's appointment to the bench.

The extraordinary career of Judge Day under President McKinley's administration, first as Assistant Secretary of State, and then as Secretary of State, and finally as chairman of the commission which negotiated the treaty of peace with Spain, has given him an enduring place among American statesmen. His whole career gives assurance of exceptionally valuable services on the bench.

Seating Members in Congress.

The dramatic features of the long deadlock in the attempt to elect a senator from Pennsylvania resulting in the governor's appointment of Senator Quay to be his own successor gives peculiar interest to the question whether he

will be given his seat. A far more important question for the country is whether the senate will be governed by any principle in the matter, or by merely partisan considerations. It is of no great consequence whether the constitutional provision for filling a senatorial vacancy which happens during the recess of the state legislature shall be interpreted to cover a failure of the legislature to elect or not. But it is important to have the interpretation settled and maintained consistently and impartially in its application to Republicans and Democrats alike. In the determination of a member's right to a seat in either house of Congress that body is essentially a court. Quibbling or partisanship in the decision of the question is as discreditable as it would be in a decision by any court of justice. Yet men who would shrink from being called dishonorable have sometimes voted on a seat contest as if right and justice were of no account when compared with party interests.

An Annual Inspiration.

There is at least one day in the year in which the detractors of human nature keep in the background. When our veterans march under the weight of years to lay flowers on the graves of their comrades a remembrance of the heroism these men have shown rekindles our faith in men.

Constant advertising by the daily press of the meannesses and selfishness and the evil of human life tends to make us think these things the chief portion of human nature. We are likely to forget that these constitute "news" chiefly because they are exceptional. Innumerable acts of friendship, kindness, unselfishness, and bravery must remain unnoticed. But fortunately the good that men do, and the heroism that they show, are sometimes too conspicuous to be overlooked, and too unmistakable for cavil. Few are so mean in spirit as to deny that there are heroes in the ranks of men now growing old, who march to comrades' graves on Memorial Day. Some of them may have serious weaknesses, faults, and even vices. Most of them may be men of ordinary abilities and commonplace appearance. But a generation ago they demonstrated on a magnificent scale that common men, doing the common work of life, may possess a heroism to which we must pay homage. Again, only a year ago, men from every part of this country, and from every class of society, became soldiers who won the admiration of the world. These are supreme proofs that the dominating motives of men are not all unworthy and selfish, and that self-denial and self-sacrifice are not mere fanciful conceptions of impracticable idealists, but are among the most actual, unmistakable, and powerful forces in the lives of practical men. Because it recalls to us these facts the march on Memorial Day is an annual inspiration.

Standards of Citizenship.

A man who fights for his wife and children against attack by a tramp may be something of a hero in that emergency, and yet be very much of a tyrant and brute on ordinary occasions. It takes something more than fighting courage under great excitement to make a decent husband and father of a family, and it takes something more than this to make a good citizen. Men who risk life for their country in time of war may cheat it in time of peace, and feel small shame therefor.

To a more enlightened patriotism the obligation to defend the nation against corruption and internal evils of any sort will be felt as keenly as the obligation to defend it against a foreign enemy. Better ideas of citizenship are needed by many men who are patriotic in war but shamefully disloyal in peace. To be sure there may be those whose patriotism can be awakened only by a fife and drum and the shouting of the crowd, but there are many whose disregard of the common obligations of citizenship is chiefly due to the fact that their ideas on this subject have not become clear and distinct. Such a man seems to think that his life belongs entirely to his country in time of war, but entirely to himself in time of peace. It must be admitted that men of education and men of successful business experience often seem oblivious to the dishonor of a life which recognizes no obligation toward the public. But they are being forced to feel it. The idea that every man of ability owes something to the public in time of peace as well as in war is becoming more common. The mingling of human motives alternately lifts and depresses the hope of moral progress, yet it is doubtful if there were ever before so many successful and powerful men who felt the spirit of *noblesse oblige*. Their thought was put in plain English a year or two ago by a public man who said in substance that every citizen ought first to provide for his family, and then devote himself to serving the public.

The man who said it did it, and his example is a powerful stimulant to better citizenship.

Most men are capable of an ambition to be useful citizens, and it will kindle rapidly under the right public sentiment.

Standards of Public Service.

If a general of the army, a commander of the navy, or a judge on the bench should betray his trust to serve private or partisanship interests he would be doomed to a disgrace worse than death. But when political bosses use the civil offices and funds of the state for the enriching of themselves and their followers the popular indignation is so weak that party newspapers dare to defend them. It has been a somewhat prevalent idea among partisans that the boss could do no wrong. They have adopted literally the debauching theory that to the victor belong the spoils, and that in the distribution of them the boss is entitled to exercise arbitrary power. They regard the theory that public office is a public trust as mere humbug which is good only for occasional use in political conventions and platforms. Extraordinary instances of the subordination of public trusts to the private profit of political bosses have been very recently brought to public notice without causing much surprise or arousing very great interest.

The practicability of any higher standard of public service in civil affairs depends entirely on what the public chooses to demand. The practicable standard of honor for our army and navy is a bravery that will not shrink from death and a loyalty that no gold can bribe. But the same spirit that makes a man incorruptible and unflinching on the battle field or a battle ship will make him equally so in the legislature if his sense of obligation is equally clear. But an officer's sense of his duty to the public will not usually be much higher or lower than that which is prevalent among the people. When the public demands, it will get, the same honesty and honorable fidelity to the public trust in the civil service that it now gets in the naval and military service.

Direct Primaries.

The most notable departure yet made from the old system of nominations by political primaries or caucuses and conventions is that recently adopted in Hennepin County, Minnesota, which includes the city of Minneapolis. According to published reports the law there abolishes nominating conventions entirely, adopts the Australian ballot system for primaries, and provides for obtaining a place on the ballot as a candidate for nomination by a petition supported by at least 5 per cent of the voters of the party as shown by the returns of the last election. This law is significant of the widespread determination of public-spirited citizens to wrest party control from the political oligarchies. Under the old system professional politicians have proved able in most cases to keep control of the nominations even when they represent but a minority of the party. This is due, in part at least, to the fact that they have the control of an organized body of party workers, of whom any amount of political work can be demanded because they expect future rewards of office, while their opponents, who are working only for the public interests, with no personal end to gain, cannot, without abandoning their private business, do the work necessary to marshal a majority of the voters of the party, many of whom are indifferent and apathetic.

But the most unique and important feature of this Minnesota experiment is the elimination of party conventions. The unwritten history of political conventions would blast many reputations. The worst phases of politics are developed in these political hotbeds. In them, bargains between candidates and bargains with delegates are almost inevitable, and too often degenerate into contracts that are positively unlawful. Bribery of delegates is frequent and sometimes hardly concealed. In fact, most people who are familiar with conventions would admit that it is in them that political corruption reaches its high-water mark. If the Minnesota idea shall prove a success it may mean much for more honest politics. It is at the least a wholesome indication of political activity for public instead of private ends.

Injunction Against Divorce in Other State.

The attempt to stop a divorce suit in another state by injunction is decidedly unusual though not unprecedented. In the recent case of Streitwolf v. Streitwolf, 41 Atl. 876, in which Vice Chancellor Pitney held that a North Dakota divorce was void for lack of jurisdiction, it appeared that a New Jersey injunction had been granted against the plaintiff in the

North Dakota case to restrain his proceeding in the divorce suit, and that this was served upon his counsel in both states, although it was not served upon him, and he claimed to have had no knowledge of it until after the trial of his suit. But the effect of the injunction was not material in this case, as it was held that the North Dakota court had no jurisdiction.

But it was expressly decided in Kittle *v.* Kittle, 8 Daly, 72, that an injunction against a husband's suit for a separation in another state can be granted when a prior suit for divorce has been brought by the wife and is still pending in the state in which the injunction is sought, while all the witnesses are within that state and the wife is financially unable to defend the suit in the other state.

The right to injunction against suits in other jurisdictions is recognized in many cases collated in a note to Thorndike *v.* Thorndike (Ill.) 21 L. R. A. 71. One of the best-established grounds for such a remedy is an attempt to evade domestic laws. This is shown as to garnishment cases by the note to Illinois Cent. R. Co. *v.* Smith (Miss.) 19 L. R. A. 580. This ground seems amply sufficient to sustain an injunction against a divorce suit in another state whenever that is brought with the purpose of evading the laws of the plaintiff's true domicil.

The right to an injunction against a suit already brought in another state is denied in some cases, but they usually limit the rule by saying it cannot be done except in a very special case. To enforce such a rule as that would substantially destroy the remedy, as a suit in another state could usually be brought without giving the defendant any previous notice of it, or any opportunity to get an injunction until after the suit was begun. But this rule seems to be more nominal than real. It has been ignored in the more modern cases, such as Sandage *v.* Studebaker Bros. Mfg. Co. 142 Ind. 148, 34 L. R. A. 363; Miller *v.* Gittings, 85 Md. 601, 37 L. R. A. 654, and Morton *v.* Hull, 77 Tex. 80, 8 L. R. A. 722. It was considered by Chief Judge Daly in Kittle *v.* Kittle, *supra*, but he did not deem the rule sufficient to preclude the injunction in that case.

Duty to Make Rules for Employees.

In the multitude of modern negligence cases there is a surprisingly large number which deal with the duties of master and servant with regard to rules for the safety of the work. A recent note on this matter in 43 L. R. A. 305, in which the subject is worked out at great length, shows the extent and limits of the doctrine which imposes a duty of this kind upon employers. It may be said generally that wherever the master should, as a reasonably prudent man, see that there is a probability of injury to some individual servant or to some class of servants if they and their fellow employees are left to regulate their actions according to their own ideas of what is proper, he is charged with the obligation to protect them as far as possible, both by prescribing lines upon which the ordinary routine of their work shall be conducted, and by declaring what precautions shall be taken by them to minimize the danger arising from special emergencies. To use the language of an eminent English judge in a noted case, he is "no less responsible to his workmen for personal injuries occasioned by a defective system of using machinery than for injuries caused by a defect in the machinery itself." Or, in other words, "a master is responsible in point of law, not only for a defect on his part in providing good and sufficient apparatus, but also for his failure to see that the apparatus is properly used."

The necessity of rules and the liability of the master for failure to make them are usually questions for the jury, although this obviously depends upon the state of the evidence.

The sufficiency of a rule is manifestly to be tested by determining whether or not it is reasonably effective to secure the safety of the employees if it is faithfully obeyed. This necessarily depends upon the extent and character of the dangers to be avoided. It is obvious that the rules must be as specific as the circumstances of each case may require to give the employees adequate information respecting the proper and safe manner of performing the work.

The cases in which this question arises are in large part, as might be expected, those relating to railroad employment; but they include employments of every kind wherein service is subject to dangers that can be avoided only by system. This is especially true in cases where there are intermittent and recurring perils, whether due to the approach of railroad trains or other dangerous bodies, or to any other movement or change of the situation in which men are working. While the subject is particularly important to rail-

road employees and employers, it is becoming more and more important in other lines of service.

Contributory Negligence in Drinking Impure Water.

The liability of a water company for supplying impure water for domestic use, thereby communicating typhoid fever to a consumer and causing his death, is denied in the recent case of Greene v. Ashland Water Co. (Wis.) 43 L. R. A. 117, on the ground of the consumer's contributory negligence in drinking the water when he knew, or had reasonable means of knowledge, that it was dangerously polluted with sewage. As to his knowledge of this the court says the proof is overwhelming that the water was dangerously polluted at the time he was stricken with the fever, and had been in that condition—especially in the spring—for several years, and that the facts in that regard were understood in the city generally, and had been the subject of discussion at public meetings in the city council and in the newspapers and among the people for a long time. Because of his contributory negligence the court denies any right of action against the water company for damages, whether based on negligence or deceit.

The victim in this case is described by the court as "an intelligent, reading workingman," and his counsel contended that it was demanding too much of a man in his walk in life to hold, as matter of law, that he should have been on his guard against the water which the entire community were drinking, and have been required to dig a well, drive a pump, or buy spring water instead of taking water from that with which the city was supplied. It was not found by the jury that he actually knew that the water was dangerous to health, but it was found to have been publicly and widely stated and believed, and indeed generally accepted as true by the people, that typhoid fever epidemics in the city were attributable to the water. This was deemed by the court to be such reasonable ground of believing the water dangerous as to prove the negligence of the man who drank it, notwithstanding the express finding of the jury that he was not in fault.

The rule of contributory negligence doubtless has a proper application in such cases, and this was an extreme case. It is not found what other facilities for obtaining water existed in that place. While it can hardly be supposed that it was impossible to procure any other water, it may have been difficult and expensive to do so. Difficulty and expense of procuring good water would hardly excuse a person for drinking water known to contain typhoid fever germs, but might excuse the drinking of water in which the existence of such germs was merely suspected. What constitutes negligence in such case would be peculiarly a question for the jury in most instances, and there is room for doubt whether it was not so in this case.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 43, Parts 4 and 5.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Banks.

A private bank is held in Du Quoin v. Kelly (Ill.) 43 L. R. A. 644, not to be a regularly organized bank within the meaning of the Illinois statute authorizing the deposit of municipal funds in regularly organized banks.

Bills and Notes.

A contemporaneous written agreement referring to a promissory note, and providing that the maker may receive the note back on surrendering certain stock, is held in American Gas & V. M. Co. v. Wood (Me.) 43 L. R. A. 449, to constitute with the note part of an entire contract the stipulations of which are mutual and dependent rather than independent and collateral.

The indorsement by a person of his own name upon commercial paper belonging to another person of the same name, with knowledge of his want of title and with intent to perpetrate a fraud, is held, in Beattie v. National Bank of Illinois (Ill.) 43 L. R. A. 654, to constitute a forgery which will not transfer title to the paper.

Brokers.

A person employing brokers to sell land, who was himself acting for an undisclosed principal and whose agency was disclosed after the brokers had brought persons who accepted an option, but before a binding agreement was made, is held in Brackenridge v. Claridge (Tex.) 43 L. R. A. 593, to have no liability to the other brokers for their commissions, because his agency was disclosed before the commissions were earned.

Building and Loan Associations.

A curative act which merely takes away the privilege of pleading usury on a contract with a building and loan association is upheld in Iowa S. & L. Asso. v. Heidt (Ia.) 43 L. R. A. 689, on the ground that it does not change the agreement, but only removes a bar to its enforcement.

Carriers.

Competition in transportation is held in Louisville & N. R. Co. v. Commonwealth (Ky.) 43 L. R. A. 541, which refuses to follow the doctrine of the Federal courts under the interstate commerce law, insufficient to make the circumstances and conditions dissimilar; and the court holds that the words "substantially similar circumstances and conditions," within the meaning of the state Constitution and statutes, relate to the actual cost of transportation.

Constitutional Law.

The forfeiture of land under the West Virginia Constitution for the failure of the owner to enter it for taxation is held in State v. Sponaugle (W. Va.) 43 L. R. A. 727, to be consistent with the Federal Constitution, and not a deprivation of property without due process of law.

Contempt.

A newspaper article published before the final determination of a cause, stating that the decision rendered is rotten, that the judge had no mind, and intimating that he was corrupt and had misstated the facts, is held in State v. Tugwell (Wash.) 43 L. R. A. 717, to constitute a contempt of court, and the fact that the publication was after the rendition of an opinion and the termination of the time for rehearing was held immaterial, if there was still time for an application to modify the opinion, which was made soon after the publication.

Contracts.

An instrument written and signed by one person for another in his presence and by his direction, though without any written authority, is held, in Morton v. Murray (Ill.) 43 L. R. A. 529, to be sufficient to bind the party under the statute of frauds.

Counties.

County warrants indorsed "not paid for want of funds," on which by the Oregon statute interest is payable at the legal rate, are held in Seaton v. Hoyt (Or.) 43 L. R. A. 634, to be thereby made contracts on which the rate of interest cannot be decreased by a subsequent statute.

Damages.

Damages for pain and suffering, in an action for the negligent killing of a passenger in a railroad accident, where the force of the collision was such that many passengers were instantly killed, and there is nothing to show that the death for which the action was brought was not instantaneous, or that the deceased continued conscious after the shock, are denied in Sweetland v. Chicago & G. T. R. Co. (Mich.) 43 L. R. A. 568.

A telegraph company was held liable for punitive damages in the case of Peterson v. Western Union Teleg. Co. (Minn.) 43 L. R. A. 581, for the malicious transmission by its station agent of a libelous message.

The measure of damages for wrongful ejection from a street car on a mistaken charge of nonpayment of fare is held in Sprenger v. Tacoma Traction Co. (Wash.) 43 L. R. A. 706, to be not limited to the price of a ticket for another fare which plaintiff had in his possession and might have used, where the conductor, instead of ascertaining, as he might have done, whether the fare had been paid, charged the passenger with attempting to beat the company, and thus placed him in a position where the use of another ticket would be an apparent admission of the charge.

Disorderly Persons.

An ordinance prohibiting any prostitute from being on the streets or alleys of the city between the hours of 7 P. M. and 4 A. M. without any reasonable necessity therefor is held in Dunn v. Com. (Ky.) 43 L. R. A. 701, to be a valid exercise of the police power under a statute giving authority to "restrain and punish prostitutes."

Easements.

Placing electric-light wires and crossarms attached to a pole over an alley is held in Carpenter v. Capital Electric Co. (Ill.) 43 L. R. A. 645, to infringe the rights of persons having an easement in the alley, although it is done to furnish electric light to one of the persons entitled to the easement, and the wires are placed about 14 feet above the surface, but where they might interfere with operations of the fire department and obstruct transfers of freight and other materials to and from second-story windows.

Electrical Uses and Appliances.

For the death of a fireman caused by stepping on a live grounded wire in a public alley it is held in Gannon v. La Clede Gas Light Co. (Mo.) 43 L. R. A. 505, that the electric company owning the wire is prima facie liable.

Eminent Domain.

An electric street-car track laid within about 7 feet of a building is held in Ashland & C. St. R. Co. v. Faulkner (Ky.) 43 L. R. A. 554, to give the abutting owner no right to compensation, although it prevents teams from standing in front of his place of business as they had formerly been able to do.

Poles for electric light wires on a country highway are held in Palmer v. Larchmont Electric Co. (N. Y.) 43 L. R. A. 672, to be a proper use, and not an additional burden on

the highway, where the town has granted the right to maintain the wires and contracted for lighting the streets with the electric light.

Evidence.

The rule that freedom from contributory negligence must affirmatively appear and is not presumed is adhered to in McLane *v.* Perkins (Me.) 43 L. R. A. 487, in case of the drowning of employees while going to their work in an old punt with a crack in one side caulked with waste, and a part of one end split off, when they were all drowned and there is no evidence as to the cause or manner of such accident.

The right to read medical books to the jury for the purpose of proving the symptoms of diseases is denied in Bixby *v.* Omaha & C. B. R. & B. Co. (Ia.) 43 L. R. A. 533, although they are admitted to be standard books, where they have not been referred to by witnesses whose testimony is to be contradicted by them.

Fisheries.

The exclusion of residents of the state who are not taxpayers, but who are willing to pay the license tax, from fishing in the public waters of the state as taxpayers are allowed to do, is held in Gustafson *v.* State (Tex.) 43 L. R. A. 615, to be in violation of the constitutional guaranty of equal rights, and the prohibition of exclusive separate public emoluments and privileges except in consideration of public services.

Husband and Wife.

The acceptance by a defendant in a divorce suit, over whom no jurisdiction was obtained, of the decree rendered, and his remarrying, are held in Hekking *v.* Pfaff (C. C. A. 1st C.) 43 L. R. A. 618, insufficient to estop him from disputing the validity of a subsequent *ex parte* proceeding in the divorce suit, by which the judgment is opened and a decree for alimony entered against him.

Insurance.

An insurance policy containing no stipulation as to suicide, taken out in good faith by the insured, is held in Seiler *v.* Economic Life Asso. (Iowa) 43 L. R. A. 537, distinguishing Ritter *v.* Mutual L. Ins. Co. 169 U. S. 39, 42 L. ed. 693, not to be avoided as against the beneficiary named therein by the fact that the assured deliberately committed suicide while sane.

A suit for the cancelation and surrender of a receipt renewing a lapsed life insurance policy, on the ground that it was obtained by fraud, is held in John Hancock Mut. L. Ins. Co. *v.* Dick (Mich.) 43 L. R. A. 566, to be maintainable in equity, although the fraud might be a defense to a pending action at law on the policy.

The contract of a member of a mutual benefit association is held in Lehman *v.* Clark (Ill.) 43 L. R. A. 648, to be a purely unilateral one which entitles him at any time to discontinue his payments without subjecting him to any liability for unpaid assessments, but only to the forfeiture of his interest.

The owner of an unfinished building is held in Foley *v.* Manufacturers' & B. F. Ins. Co. (N. Y.) 43 L. R. A. 644, to have an insurable interest to the extent of its value, although under the building contract the loss, if there were no insurance, would fall on the builder.

Death resulting from a ruptured artery is held in Feder *v.* Iowa State Traveling Men's Asso. (Ia.) 43 L. R. A. 693, to be not accidental when it occurred while one was reaching over a chair to close window shutters, and did not fall, slip, or lose his balance, and when nothing was done or occurred which he had not foreseen and planned excepting the rupture.

Judgment.

The record and judgment of dismissal in a divorce proceeding for adultery is held in State *v.* Bradneck (Conn.) 43 L. R. A. 620, to be inadmissible in a subsequent criminal prosecution for non-support of the wife, in defense of which the same acts of adultery are sought to be set up.

Landlord and Tenant.

Temporary retention of leased premises by a firm of tenants under a permit from one of the firm who is also a tenant in common of the premises, owning an undivided one fourth, is held in Valentine *v.* Healey (N. Y.) 43 L. R. A. 667, to be insufficient to constitute a renewal of the lease,—especially when the lessees had a right to assume their copartner's authority because of his making the lease to the firm in the first place.

Liens.

A statutory laborer's lien for harvesting grain is held in Wilson *v.* Donaldson (Cal.) 43 L. R. A. 524, to have no superiority over a prior chattel mortgage, where it was not so provided by statute.

Mines.

Oil while it remains *in situ* being regarded as real estate and as the property of the owner of the land, although he has made a lease for oil and gas purposes, it is held in Carter *v.* Tyler County (W. Va.) 43 L. R. A. 725, that the prospective product of oil wells cannot be assessed to the lessee as personal property.

Mortgages.

A redemption from a mortgage sale by repaying the amount for which it was sold, when that is less than the face of the mortgage, is held in Fields *v.* Danehower (Ark.) 43 L. R. A. 519, not to restore the lien for the unpaid balance of the mortgage debt.

A chattel mortgage on hotel furniture is held in New Lincoln Hotel Co. *v.* Shears (Neb.) 43 L. R. A. 588, to be superior to the lien of the lessor under a provision in the lease made before the building was finished, attempting to cover all personal property thereafter brought upon the premises.

Municipal Corporations.

A resolution of a council making a compromise with a contractor on a contract imperfectly performed is held in Weston *v.* Syracuse (N. Y.) 43 L. R. A. 678, to be subject to attack for fraud and corruption, as it is not a legislative act, but part of the administrative duties of the council.

Previous residence in territory annexed to a city is held in Gibson *v.* Wood (Ky.) 43 L. R. A. 699, to be deemed a residence within the city for the purpose of computing the period of residence necessary to make a person eligible to a city office.

Offices.

The presiding officer of a municipal court is held in Calhoun *v.* Little (Ga.) 43 L. R. A. 630, not to be subject to any personal liability for the judicial determination that a given ordinance is valid, though it is in fact void for want of authority to pass it, and for enforcing it by imprisonment of the person convicted for its violation, when there was jurisdiction of the subject-matter.

Principal and Surety.

The extension of the time of payment by an agreement without consideration is held in Olmstead *v.* Latimer (N. Y.) 43 L. R. A. 685, insufficient to discharge a surety.

Public Improvements.

A lotowner who has been compelled to pay an assessment for a street improvement which is subsequently abandoned on the part of the street for which he was assessed is held in McConvill *v.* St. Paul (Minn.) 43 L. R. A. 584, to have a right of action against the municipal corporation for the repayment of his money.

Public Landing.

A lease of part of a public landing to a private person is held in Reighard *v.* Flinn (Pa.) 43 L. R. A. 502, to be beyond the lawful power of a city council, especially when the city charter provides that the rights of property conferred shall not be construed to authorize the sale, lease, or alienation of such landings.

Railroads.

The duty of a railroad company to make an alteration in the grade of the crossing at its own expense, so as to conform to a new grade of the street, is enforced in Cleveland *v.* Augusta (Ga.) 43 L. R. A. 638, as it builds its track on the implied condition that it will yield to the reasonable burdens imposed by the growth and development of the community.

Receivers.

The right of the receiver of a corporation appointed in another state to sue for the enforcement of the liability of stockholders is denied in Wyman *v.* Eaton (Iowa) 43 L. R. A. 695, when it would be in contravention of the right of the citizens of the state, and operate to their injury.

State Institutions.

The board of managers of the World's Columbian Exposition, which is created by statute

and the members of which are appointed by the governor as a state agency, is held, in Gross v. Kentucky Board of Managers of World's Columbian Exposition (Ky.) 43 L. R. A. 703, to be at least a quasi corporation which may be sued for breach of contract without the consent of the state, although it is not expressly named as a corporation, where it is expressly given power to make contracts and furnished with certain funds, while the state expressly declares that it will not be responsible for any indebtedness of the board.

Taxes.

College dormitories and dining halls for students are held in Yale University v. New Haven (Conn.) 43 L. R. A. 490, to be exclusively occupied as a college within the meaning of the statute providing for the exemption of buildings occupied as colleges from taxation.

A convent building used solely as a residence for teachers in a school maintained as a charity, and which is a part of the school property and necessary for the efficient operation and management of the school, is held in White v. Smith (Pa.) 43 L. R. A. 498, to be included in the exemption of the school buildings from taxation.

Trusts.

Money withheld by the mortgagee in breach of his promise to advance the full amount of the mortgage loan for building purposes on land not yet paid for is held in Anglo-American Savings and L. Asso. v. Campbell (D. C.) 43 L. R. A. 622, to be subject to a constructive trust in favor of persons who have furnished labor or materials for the buildings in reliance upon the mortgagee's representations that he will make the advance.

Vendor and Purchaser.

A vendor's lien upon a sale, for a gross consideration, of both real and personal property, without any apportionment of the price, is held in Doty v. Deposit Bldg. & L. Asso. (Ky.) 43 L. R. A. 551, to be enforceable against the real property for the entire amount.

Warehousemen.

One licensed to keep a public warehouse for the storage of grain is held in Central Elevator Co. v. Moloney (Ill.) 43 L. R. A. 658, to have no right to deal in grain and store it in his own licensed warehouse; and the same rule is held applicable to the stockholders of a corporation so licensed.

Wills.

A condition in a will that a son shall procure a divorce from his wife in order to have an absolute estate, and if he does not shall have only a life estate, is held in Randall v. Boston (Ill.) 43 L. R. A. 526, to be lawful and not against public policy, where the son had a divorce suit pending at the time the will was made.

Witness.

The rule that a person cannot impeach his own witness is held in Fall Brook Coal Co. v. Hughson (N. Y.) 43 L. R. A. 676, insufficient to prevent a person who has put a witness on the stand but excused him without asking him any material question, from cross-examining and discrediting him by contradictory statements out of court, if he is afterwards called and examined by the other party.

Recent Articles in Law Journals and Reviews.

"Jurisdiction of State and Federal Courts in Actions by and against National Banks, and Receivers Thereof."—48 Central Law Journal, 331.

"Receiverships of Building and Loan Associations."—48 Cent. L. J. 369.

"Liens of the Receivership of a Business Corporation."—38 American Law Register, N. S. 273.

"Preferred Demands against Insolvent Estates."—48 Central Law Journal, 350.

"The Doctrine of Pressure in Cases of Preference of Creditors of Insolvent Debtors."—35 Canada Law Journal, 322.

"The Status of the Law Governing the Liability of Irregular Indorsers."—48 Central Law Journal, 311.

"Privileges and Immunities of State Citizenship.—48 Central Law Journal, 431.

"Anomalous Indorsement in Pennsylvania."—38 American Law Register, N. S. 235.

"Government Control of Transportation Charges."—38 American Law Register, N. S. 288.

"Tramp Corporations."—48 Central Law Journal, 391.

ordinance is valid, though it is in fact void | dian Exposition, which is created by statute

"Trial by Judge and Jury."—33 American Law Review, 321; 4 Kansas City Bar Monthly, 124.

"The Betterment Tax."—33 American Law Review, 347.

"Will a Court of Equity Compel a Purchaser to Accept a Title Resting Solely on Adverse Possession?"—33 American Law Review, 357.

"A New Phase in Garnishment Law."—33 American Law Review, 367.

"Confessions; a Brief History and a Criticism."—33 American Law Review, 376.

"Liability of a Landlord for Leasing Premises Infected with Disease."—3 Indiana Law Journal, 208.

"Effect of Promise by Master to Repair Defective Machinery in the Future."—3 Indiana Law Journal, 219.

"Is Serving Wine to Guests at Certain Times a Misdemeanor?"—3 Indiana Law Journal, 230.

"The Judicial Department."—3 Indiana Law Journal, 252.

"Calhoun as a Lawyer and Statesman."—11 Green Bag, 197.

"Citizenship in Ceded Territory."—11 Green Bag, 203.

"Legal Position of Women in Ancient Greece."—11 Green Bag, 209.

"A Glance at Legislative Contempt."—11 Green Bag, 226.

New Books.

"Compendium of Evidence." By D. Augustus Straker (The Richmond & Backus Co., Detroit, Mich.) 1 Vol. $3.

"Constitution of the United States." By John Randolph Tucker. Edited by Henry St. George Tucker (Callaghan & Co., Chicago, Ill.) 2 Vols. $7.

"Compiled Laws of Michigan," 1897. (The Richmond & Backus Co., Detroit, Mich.) 3 Vols. and Index. $7.

"Digest of Bankruptcy Decisions." By E. C. Brandenburgh (L. C. P. Co., Rochester, N. Y.) 1 Vol. $6.50.

"State Trials." Edited by Charles Edward Lloyd (Callaghan & Co., Chicago, Ill.) 1 Vol. Cloth, $3. Sheep, $3.50.

"California Attorneys' Directory," 1889. (Charles W. Palm Co., Los Angeles, Cal.) 1 Vol. $1.

The Humorous Side.

BOOSEY IN PARADISE.—In a recent copyright case involving the use of certain sheets of music on the Æolian, a "Boosey" person attempted to establish some superior rights in "My Lady's Bower," "The Better Land," and "The Holy City."

A YOUTHFUL POLITICIAN.—A boy fourteen years of age, who said "he did not know he had a soul, that he did not know what morals meant or moral responsibility," when asked as to the nature of an oath said "if he told one story he would go to the legislature, if he told two he would go to Congress."

SOBER AS A JUDGE.—A popular judge recently took a pleasure drive through the country with a party of four (of whom his wife was one). Rolling along in a white high-built trap, they seem to have been taken for high rollers, as an innocent-looking countryman, of whom the judge blandly inquired for a hotel, replied: "Yes, there is a hotel right down yonder, but it's a temperance hotel."

DIVORCE BY JUSTICE OF THE PEACE.—A rural Justice of the Peace who formerly held court in the suburbs of Atlanta, Ga., was an Irishman who held exalted views of the indissolubility of a religious marriage, but believed that a marriage celebrated by a Justice of the Peace was only a civil contract and could be dissolved by the authority of the same magistrate. For ignorant negroes who sometimes applied to him for divorces he was accustomed to pass an order something like this:— "Whereas this Court, on the — day of — 187-, united in marriage William Jones and Mary Brown, persons of color (the same being purely a civil contract and not a religious sacrament), and said William and Mary have this day appeared before me and agreed in open Court to rescind said civil contract, and have paid the costs of Court: Therefore it is adjudged that said William Jones and Mary Brown are divorced from each other, and the bonds of matrimony heretofore existing between them (the same being purely a civil contract) are hereby dissolved and the said William and Mary have leave to get married again." His peculiar ideas of his jurisdiction and prerogatives resulted finally in his conviction for malpractice in office. His mistake was in failing to realize that his philosophical ideas, like many constitutional provisions, were not self-executing, but needed to be embodied in legislation before they could be given effect.

(Charles W. Paul Co., Los Angeles, Cal.) 1 Vol. $1.

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